

## **BILL ANALYSIS**

Senate Research Center  
89R5056 JAM-F

S.B. 1261  
By: Perry  
Water, Agriculture and Rural Affairs  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 1261 provides for optional financing tools to enable affordable implementation of large, regional water supply projects included in the Texas State Water Plan without adding to the state's debt or funding. As filed, the bill authorizes qualifying political subdivisions to access open market financing for up to 40 years and extends the existing SWIFT program at the Texas Water Development Board (TWDB) from 30 years to 40 years for financing of regional water supply projects included in the state water plan that cost more than \$750 million.

With continued population growth, the costs and time needed to implement regional water supply projects continues to increase. Large water supply projects may take more than 10 years to plan and construct before delivering water. Conventional 30-year financing burdens existing rate payers with shouldering up to one-third of the financing costs before new water for new growth is even online and available. This premise impedes local investment in future regional water infrastructure and water supplies needed to sustain population growth and economic development.

Current financing terms are governed by a patchwork of authorizations ranging from enumerated provisions in enabling special district and local laws, state statutes, attorney general opinions, and agency rules. Examples of existing 50-year financing authorizations include: TWDB's D-Fund (Section 17.953, Water Code), Agriculture Water Conservation Program (Section 17.873, Water Code), and Water Loan Assistance Fund (Section 15.107, Water Code). Also, TxDOT's Infrastructure Bank Revenue Bond program (Chapter 222.075, Transportation Code).

Additional examples of entities that have 50-year authorization include some river authorities, water districts, hospital districts, etc. while others that are similar (like GBRA) are silent. And, in 2023, the Office of Attorney General issued a letter regarding the issuance of bonds which require the attorney general's approval stating that there is a presumption of 40 years limit when a long-term financing statute is silent as to maximum maturity. This limitation also restricts access to the open markets when not utilizing state financing programs or funds.

Authorizing additional financial tools enables wholesale customers of regional projects, such as municipalities and local water supply districts, to benefit from lower annual debt structures/payments so the cost of these projects can be shifted more from the existing rate payers to the future customers as growth occurs.

While extended financing does not lower the cost of the project, these additional structures can effectuate a 10-15 percent lower annual debt service payment to the wholesale customer.

S.B. 1261 is a permissive tool available only to political subdivisions that have an identified, recommended water management strategy in the state water plan with costs more than \$750 million. The 2022 state water plan includes approximately 15 such projects (reservoir development/enhancement, brackish groundwater and seawater desalination, and expanded transmission and treatment). With the 2027 state water plan under development, more qualifying projects are likely to be identified.

S.B. 1261 provides tools to enable affordability and allows utilities to participate in large regional projects. It does not add additional state debt or programs and maintains consistency with existing TWDB programs and authorizations.

As proposed, S.B. 1261 amends current law relating to the financing of water supply projects included in the state water plan and authorizes the issuance of obligations.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subtitle F, Title 9, Government Code, by adding Chapter 1373, as follows:

#### **CHAPTER 1373. ISSUANCE OF BONDS BY POLITICAL SUBDIVISIONS FOR WATER PROJECTS**

Sec. 1373.001. DEFINITIONS. Defines "board," "eligible project," "indebtedness," "issuer," "obligation," "obligation authorization," and "state water plan."

Sec. 1373.002. CONSTRUCTION. Requires that this chapter be liberally construed to achieve the legislative intent and purposes of this chapter. Requires that a power granted by this chapter be broadly interpreted to achieve the intent and purposes.

Sec. 1373.003. RELATIONSHIP TO OTHER LAW. (a) Provides that, to the extent of any conflict or inconsistency between this chapter and another law or a municipal charter, this chapter controls.

(b) Authorizes an issuer to use any provision of another law that does not conflict with this chapter to the extent convenient or necessary as determined by the issuer to carry out any power or authority, express or implied, granted by this chapter, without reference to any other laws or any restrictions or limitations contained in those laws.

(c) Provides that Chapter 1207 (Refunding Bonds) applies to the refunding of obligations issued or incurred under this chapter.

Sec. 1373.004. AUTHORITY TO ISSUE OBLIGATIONS. Authorizes obligations, notwithstanding any other law, as authorized and approved by the governing body of an issuer, to be issued, sold, incurred, and delivered to finance or refinance an eligible project; refund obligations, other indebtedness, or contractual obligations of the issuer issued or incurred in connection with an eligible project; and pay the costs of issuance or delivery of the obligations.

Sec. 1373.005. SECURITY FOR OBLIGATION. (a) Authorizes an obligation to be secured by certain sources.

(b) Authorizes the governing body of an issuer to secure an obligation and pay the cost of a contract or other agreement executed and delivered in connection with the financing of an eligible project with a pledge of the sources permitted by this chapter.

(c) Prohibits the term of those contracts, notwithstanding any other law, if an issuer secures an obligation with contracts or the revenue from the contracts, from being less than the final maturity or term of such obligations pursuant to Section 1373.008.

(d) Requires that any obligations payable wholly or partly from a pledge of ad valorem taxes to finance or refinance an eligible project be approved by the voters of the issuer at an election held for that purpose.

Sec. 1373.006. USE OF PROCEEDS. Authorizes an issuer to use the proceeds from the issuance or incurrence of an obligation to finance and refinance an eligible project, including costs authorized by Section 1201.042(a) (relating to authorizing an issuer to use the proceeds of a public security for certain purposes).

Sec. 1373.007. TEXAS WATER DEVELOPMENT BOARD FINANCING OR FUNDING OF ELIGIBLE PROJECTS. (a) Prohibits any financing or funding provided by the Texas Water Development Board (TWBD) for an eligible project from exceeding the maturity or term of an obligation pledged to the project.

(b) Requires TWBD, if the design, construction, and placing into service of an eligible project is estimated to take more than four years, as certified by a licensed professional engineer selected by the issuer, to make a multiyear commitment of any financing or funding provided by TWBD of the eligible project at the request of the issuer.

Sec. 1373.008. MATURITY OR TERM OF OBLIGATIONS. (a) Prohibits the maximum maturity or term of an obligation issued pursuant to this chapter from exceeding the lesser of the reasonably expected weighted average useful life of the eligible project as certified by a licensed professional engineer selected by the issuer or 40 years from the date of issuance of the obligation.

(b) Prohibits the determination of reasonably expected weighted average useful life of an eligible project made under Subsection (a) from being contested for any reason.

Sec. 1373.009. OBLIGATION AUTHORIZATION. (a) Requires the governing body of an issuer to adopt or approve an obligation authorization before an obligation is authorized to be issued or incurred.

(b) Requires that the obligation authorization establish:

(1) the maximum amount of the obligation to be issued or incurred or, if applicable, the maximum principal amount that is authorized to be outstanding at any time;

(2) subject to Section 1373.008, the maximum term for which the obligation issued or incurred under the authorization is authorized to be outstanding;

(3) the maximum interest rate the obligation is authorized to bear;

(4) subject to Subsection (c)(2), the manner of sale of the obligation, which is authorized to be by public or private sale, the price of the obligation, the form of the obligation, and the terms, representations, and covenants of the issuer made in connection with the issuance of the obligation, if applicable; and

(5) each source pledged or to be pledged to the payment of the obligation.

(c) Authorizes the obligation authorization to:

(1) provide for the designation of a paying agent and registrar for the obligation; and

(2) authorize one or more designated officers or employees of the issuer to act on behalf of the issuer from time to time in selling, incurring, and delivering obligations and setting the dates, price, interest rates, interest payment periods, redemption features, and other procedures relating to the

issuance, sale, incurrence, and delivery of obligations, as specified in the obligation authorization.

Sec. 1373.010. EFFECT OF FINDING OR DETERMINATION UNDER DELEGATION OF AUTHORITY. Provides that a finding or determination made by an officer or employee acting under the authority delegated to the officer or employee by an obligation authorization adopted or approved under this chapter has the same force and effect as a finding or determination made by the governing body.

Sec. 1373.011. REVIEW AND APPROVAL OF OBLIGATION AND CONTRACT BY ATTORNEY GENERAL. (a) Requires that a record of the proceedings of the issuer authorizing the issuance, execution, incurrence, and delivery of the obligation and any contract providing revenue or security pledged to the payment of the obligation, before an obligation is authorized to be issued or incurred, to be submitted to the attorney general for review.

(b) Requires the attorney general, if the attorney general finds that the proceedings authorizing an obligation conform to the requirements of the Texas Constitution and this chapter, to approve it and deliver to the Comptroller of Public Accounts of the State of Texas (comptroller) a copy of the attorney general's legal opinion stating that approval and the record of proceedings. Authorizes the obligation, after approval, to be executed and delivered, exchanged, or refinanced from time to time in accordance with those authorizing proceedings.

Sec. 1373.012. REGISTRATION. Requires the Comptroller of Public Accounts of the State of Texas (comptroller), on receipt of the documents required by Section 1373.011(b), to register the record of the proceedings relating to the issuance of an obligation.

Sec. 1373.013. VALIDITY AND INCONTESTABILITY. (a) Provides that, if proceedings to authorize an obligation are approved by the attorney general and registered by the comptroller, each obligation and any contract that provides revenue or security included in or executed and delivered according to the authorizing proceedings and pledged to the payment of the obligation is incontestable in a court or other forum and is valid, binding, and enforceable according to its terms.

(b) Provides that an obligation authorized by this chapter, notwithstanding Subsection (a) and except as provided by this subsection, is not valid, binding, or enforceable unless the obligation is approved by the attorney general and registered by the comptroller in accordance with Chapter 1202 (Examination and Registration of Public Securities).

SECTION 2. Amends Section 15.432(b), Water Code, to provide that money deposited to the credit of the fund is authorized to be used only for certain purposes, including for eligible projects authorized under Chapter 1373, Government Code, and to make nonsubstantive changes.

SECTION 3. Amends Section 15.435(c), Water Code, as follows:

(c) Authorizes TWBD, if the Texas Treasury Safekeeping Trust Company (trust company) enters into a bond enhancement agreement under Subsection (b), to direct the trust company to make disbursements from the state water implementation fund to another fund or account for the support of bonds the proceeds of which are used to provide financial assistance in certain forms, including in the form of a loan to finance a facility under repayment terms similar to the terms of debt customarily issued by the entity requesting assistance but not to exceed the lesser of the expected useful life of the facility or 30 years or, for an eligible project authorized by Chapter 1373, Government Code, 40 years.

SECTION 4. Amends Section 15.474(a), Water Code, to make a conforming change.

SECTION 5. Amends Section 17.852(5), Water Code, to redefine "project."

SECTION 6. Amends Section 17.957(c), Water Code, as follows:

(c) Authorizes money on deposit in the state participation account to be used by TWBD, in the manner that TWBD determines necessary for the administration of the Texas Water Fund II, for certain projects, including eligible projects, as defined by Section 1373.001, Government Code. Makes nonsubstantive changes.

SECTION 7. Effective date: September 1, 2025.